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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

ENRON CREDITORS RECOVERY CORP. *et al.* (f/k/a/
ENRON CORP., *et al.*),

Reorganized Debtors.

ENRON POWER MARKETING, INC.,

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY

Defendant.

Chapter 11

Case No. 01-16034 (AJG)

Jointly Administered

Adv. Proc. No. 03-02064 (AJG)

**PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY'S
DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF ISSUES TO
BE PRESENTED**

Public Utility District No. 1 of Snohomish County (“Snohomish”), pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, hereby provides its (i) designation of the items to be included in the record on appeal and (ii) statement of the issues to be presented on appeal with respect to the Order Striking in Part Certain Defenses of Public Utility District No. 1 of Snohomish County and Granting Cross-Motion of Snohomish County to Compel Arbitration and Dismiss Adversary Proceeding, entered on March 19, 2007, including all interlocutory orders that merge into that final judgment.

A. Designation of Record

The following items are to be included in the record on appeal:

1. Complaint against Public Utility District No. 1 of Snohomish County for Declaratory Relief and for Damages (Docket No. 1)
2. Notice of Motion to Dismiss Adversary Proceeding or, in the Alternative, to Stay It Pending Arbitration (Docket No. 12)
3. Memorandum of Law in Support of Motion to Dismiss Adversary Proceeding or, in the Alternative, to Stay It Pending Arbitration (Docket No. 13)
4. Memorandum of Law in Support of Enron Power Marketing, Inc.’s Motion for an Order (1) Enforcing the Automatic Stay and the Court’s Mediation Order and (2) Enjoining Public Utility District No. 1 of Snohomish County from Seeking Clarification from the FERC (Docket No. 17)
5. Affidavit of Jonathan D. Polkes in Support of Enron Power Marketing, Inc.’s Motion for an Order (1) Enforcing the Automatic Stay and the Court’s Mediation Order and (2) Enjoining Public Utility District No. 1 of Snohomish County from Seeking Clarification from the FERC (Docket No. 18)
6. Motion of Enron Power Marketing, Inc. for an Order (1) Enforcing the Automatic Stay and the Court’s Mediation Order and (2) Enjoining Public Utility District No. 1 of Snohomish County from Seeking Clarification from the FERC (Docket No. 19)
7. Memorandum of Law in Opposition to the Motions of Enron Power Marketing, Inc. and Enron North America Corp. for Orders (1) Enforcing the Automatic Stay and the Court’s First Amended Order Governing Mediation of Trading Cases and (2) Enjoining Palo Alto and Snohomish from Seeking Clarification from the

Federal Energy Regulatory Commission Regarding Its July 22, 2004 Order
(Docket No. 23)

8. Public Utility District No. 1 of Snohomish County Washington's Counterstatement of Facts in Opposition to the Enron Power Marketing, Inc.'s Motion for an Order (1) Enforcing the Automatic Stay and the Court's Mediation Order and (2) Enjoining Public Utility District No. 1 of Snohomish County from Seeking Clarification from the FERC (Docket No. 24)
9. Declaration of Philippe Zimmerman (Docket No. 25)
10. Affidavit of Eric L. Christensen (Docket No. 26)
11. Memorandum of Law in Reply to City of Palo Alto's and Public Utility District No. 1 of Snohomish County's Memorandum of Law in Opposition to Enron Power Marketing, Inc.'s and Enron North America Corp.'s Motion for an Order (1) Enforcing the Automatic Stay and the Court's Mediation Order and (2) Enjoining the City of Palo Alto and Public Utility District No. 1 of Snohomish County from Seeking Clarification from the FERC (Docket No. 28)
12. Order signed on 1/14/2005 (i) granting the motion by Enron Power Marketing, Inc. seeking an order enforcing the automatic stay and (ii) denying the motion by Enron Power Marketing, Inc. seeking to compel Public Utility District No. 1 of Snohomish County to withdraw its request for clarification, dated August 2, 2004, pending before FERC (Docket No. 30)
13. Transcript of Hearing Held on 12/1/2004 (Docket No. 40)
14. Notice of Motion of Enron Power Marketing, Inc. for an Order Withdrawing the Reference (Docket No. 50)
15. Memorandum of Law in Support of Enron Power Marketing, Inc.'s Motion to Withdraw the Reference (Docket No. 51)
16. Affidavit of Jonathan D. Polkes in Support of Enron Power Marketing, Inc.'s Motion for an Order Withdrawing the Reference (Docket No. 52)
17. Opinion and Order of U.S. District Court Judge Loretta A. Preska signed on 8/31/2006, resolving the motion to withdraw reference (Docket No. 56)
18. Enron Power Marketing, Inc.'s Motion for Partial Summary Judgment (Docket No. 57)
19. Enron Power Marketing, Inc.'s Statement of Material Facts Not in Issue (Docket No. 58)
20. Memorandum of Law in Support of Enron Power Marketing, Inc.'s Motion for Partial Summary Judgment (Docket No. 59)

21. Affidavit of Garrick A. Hill (Docket No. 60)
22. Declaration of Israel Dahan, with Exhibits A-I (Docket No. 61)
23. Enron Power Marketing, Inc.'s Motion for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 65)
24. Memorandum of Law in Support of Motion for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 66)
25. Declaration of Israel Dahan in Support of Motion for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 67)
26. Memorandum of Law of Defendant Public Utility District No. 1 of Snohomish County, Washington, in Opposition to Motion of Enron Power Marketing, Inc. for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 69)
27. Declaration of Alan Gamza in Opposition to Motion of Enron Power Marketing, Inc. for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 70)
28. Reply Memorandum of Law in Further Support of Enron Power Marketing, Inc.'s Motion for an Order Enforcing the Automatic Stay and Enjoining Public Utility No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 72)
29. Order signed on October 30, 2006 granting Enron Power Marketing, Inc.'s Motion for an Order Enforcing the Automatic Stay and Enjoining Public Utility District No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 73)
30. Transcript of Hearing Held on October 26, 2006 at 10:10 a.m., re: Motion By Plaintiff Enforcing the Automatic Stay and Enjoining Public Utility District No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 75)
31. Transcript of Hearing Held on October 26, 2006 at 2:06 p.m., re: Motion By Plaintiff Enforcing the Automatic Stay and Enjoining Public Utility District No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 76)

32. Transcript of Hearing Held on October 26, 2006 at 3:56 p.m., re: Motion By Plaintiff Enforcing the Automatic Stay and Enjoining Public Utility District No. 1 of Snohomish County from Further Prosecution of Its Petition Before FERC (Docket No. 77)
33. Notice of Cross-Motion of Defendant Public Utility District No. 1 of Snohomish County to Dismiss, Stay or Defer, or in the Alternative, for Summary Judgment (Docket No. 80)
34. Affidavit of Robert F. McCullough in Support of Public Utility District No. 1 of Snohomish County, Washington (Docket No. 81)
35. Affidavit of Dr. Carl Pechman, Ph.D. (Docket No. 82)
36. Response of Defendant Public Utility District No. 1 of Snohomish County to Plaintiff Enron Power Marketing, Inc.'s Statement of Material Facts Not in Issue (Docket No. 83)
37. Public Utility District No. 1 of Snohomish County's Statement of Material Facts Not in Issue (Docket No. 84)
38. Affidavit of Philippe Zimmerman Pursuant to Rule 56(f) of the Federal Rules of Civil Procedure (Docket No. 85)
39. Declaration of Eric Lee Christensen (Docket No. 86)
40. Affidavit of Glenn S. McPherson on Behalf of Public Utility District No. 1 of Snohomish County, Washington (Docket No. 87)
41. Memorandum of Law of Defendant Public Utility District No. 1 of Snohomish County in Opposition to Plaintiff's Motion for Partial Summary Judgment and in Support of Defendant's Cross-Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 88)
42. Declaration of Philippe Zimmerman with exhibits (Docket Nos. 89, 91, 92, 93 and 94)
43. Order Allowing the Filing by Public Utility District No. 1 of Snohomish County of Certain Documents Under Seal (Docket No. 107)
44. Statement: Exhibits 29 and 68 through 72 FILED UNDER SEAL (Docket No. 109)
45. Memorandum of Law in Further Support of Plaintiff Enron Power Marketing, Inc.'s Motion for Partial Summary Judgment and in Response to Public Utility District No. 1 of Snohomish County's Cross-Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 96)

46. Affidavit of Israel Dahan Pursuant to FRCP Rule 56(f) (Docket No. 97)
47. Supplemental Declaration of Israel Dahan (Docket No. 98)
48. Supplemental Affidavit of Garrick A. Hill (Docket No. 99)
49. Response of Enron Power Marketing, Inc. to Defendant Public Utility District No. 1 of Snohomish County's Statement of Material Facts Not in Issue (Docket No. 100)
50. Supplemental Declaration of Philippe Zimmerman (Docket No. 104)
51. Reply Memorandum of Law of Defendant Public Utility District No. 1 of Snohomish County in Further Support of its Cross-Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 105)
52. Transcript of Hearing Held on 2/8/07 Re Motion by Plaintiff for Partial Summary Judgment (Docket No. 110)
53. Opinion signed on 3/9/2007 concerning Plaintiff Enron Power Marketing, Inc.'s motion for partial summary judgment and concerning Public Utility District No. 1 of Snohomish County's cross-motion to dismiss or, in the alternative, for summary judgment (Docket No. 111)
54. Order signed on 3/19/2007 striking in part certain defenses of Public Utility District No. 1 of Snohomish County and granting cross-motion of Snohomish County to compel arbitration and dismiss adversary proceeding (Docket No. 115)
55. Notice of Appeal on Behalf of Public Utility District No. 1 of Snohomish County (Docket No. 116)

B. Statement of Issues

1. Whether the District Court erred by failing to dismiss Enron Power Marketing, Inc.'s ("EPMI") request for declaratory relief in order to permit the Federal Energy Regulatory Commission ("FERC") to determine the scope of its jurisdiction under Section 1290 of the Energy Policy Act of 2005 ("Section 1290") in the first instance, subject to appeal to the appropriate Court of Appeals under the Federal Power Act.
2. Whether Section 1290 confers exclusive jurisdiction on FERC to determine whether the termination payment sought by EPMI is permitted under EPMI's contract with Snohomish.
3. Whether Snohomish violated the automatic stay of 11 U.S.C. § 362(a)(3) by filing a petition with FERC seeking a determination that attempts by EPMI to collect a disputed termination charge from Snohomish violated the Federal Power Act and prior FERC orders.

4. Whether the filing of such a petition is an attempt to “obtain possession of property of the estate” or “exercise control over property of the estate” within the meaning of 11 U.S.C. § 362(a)(3).
5. Whether the filing of such a petition violated the automatic stay of 11 U.S.C. § 362(a)(3), which expires pursuant to § 362(c)(1) when property is no longer “property of the estate,” given that all estate property had already reverted in the reorganized debtor upon confirmation of its plan of reorganization.
6. Whether the Bankruptcy Court erred in enjoining Snohomish from pursuing a petition filed in a pending and uncompleted administrative proceeding.
7. Whether the Bankruptcy Court erred in ruling that the determination of state-law issues regarding contracts within FERC’s regulatory jurisdiction is not within FERC’s regulatory police power and thus not within the exception to the automatic stay set out in 11 U.S.C. § 362(b)(4).
8. Whether the Bankruptcy Court erred in determining that FERC’s June 28, 2006 order was void *ab initio* as in violation of the automatic stay and therefore not preclusive with respect to EPMI’s termination-payment claim.
9. Whether the Bankruptcy Court erred in holding that FERC’s revocation of EPMI’s market-based rate authority, and EPMI’s failure to obtain wind-down authority, did not preclude EPMI from collecting a termination payment under its contract with Snohomish.
10. Whether the Bankruptcy Court erred by refusing to defer further action on EPMI’s termination-payment claim until the resolution of related pending proceedings at FERC.

Dated: April 2, 2006

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